

2004 BCSECCOM 81

Order

Richard Harris

Section 161 of the *Securities Act*, RSBC 1996, c. 418

Background

- ¶ 1 The Executive Director has entered into a Settlement Agreement with Richard Harris (Harris), a copy of which is attached as Schedule A.

The Order

- ¶ 2 The Executive Director, considering it to be in the public interest to do so, orders, by consent, that:
1. under section 161(1)(c) of the *Securities Act*, RSBC 1996, c. 418 the exemptions described in sections 44-47, 74, 75, 98 or 99 of the Act do not apply to Harris;
 2. under section 161(1)(d)(i) of the Act, Harris resigns any positions he holds as a director or officer of any issuer by February 1, 2004;
 3. under section 161(1)(d)(ii) of the Act, Harris is prohibited from becoming or acting as a director or officer of any issuer; and
 4. under section 161(1)(d)(iii) of the Act, Harris is prohibited from engaging in investor relations activities.

- ¶ 3 January 30, 2004

- ¶ 4 Brenda Leong
A/Executive Director

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Schedule A Settlement Agreement

Richard Harris

Section 161 of the *Securities Act*, RSBC 1996, c. 418

- ¶ 1 The following settlement of issues has been reached between Richard Harris (Harris) and the Executive Director.

Agreed Statement of Facts

- ¶ 2 As the basis for the undertakings and orders referred to in this settlement, Harris acknowledges the following facts as correct.

1. Harris is currently a resident of Costa Rica.
2. Harris was, at all material times, a principal of Harris McLean Financial Group Ltd. (Harris McLean), which was an investment firm operating out of the Cayman Islands but which has since been liquidated. Neither Harris, nor Harris McLean, has ever been registered in British Columbia under the *Securities Act*, RSBC 1996, c. 418 (the Act) in any capacity.
3. In or about January of 1997, Michael Lee Mitton (Mitton), either directly or indirectly, acquired approximately 3,728,000 of the 4,000,000 issued and outstanding shares of H&R Enterprises, Inc. (H&R), a company that traded on the OTC Bulletin Board in the United States. Mitton distributed approximately 3,052,000 of the 3,728,000 shares to Harris McLean.
4. At the time Mitton was, and continues to be, subject to an order issued by the Superintendent of Brokers that prohibits him from acting as a director or officer of any issuer and from trading in British Columbia until 2008 (Mitton's Cease Trade Order). Furthermore, Mitton has a lengthy criminal record in Canada and has been convicted of fraud and fraud-related offences on several occasions.
5. Harris was not aware when he met Mitton of Mitton's Cease Trade Order and Mitton's past criminal record but he became aware of those facts on or about May 1996.
6. Between January, 1997 and September 1997, Mitton manipulated the price of the shares of H&R by:

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- (a) distributing the shares of H&R to nominees and promoters;
 - (b) issuing press releases which contained false and misleading information;
 - (c) causing H&R to issue 2,455,000 shares from treasury to nominees, without H&R receiving payment therefore;
 - (d) instructing the nominees to open brokerage accounts at various brokerage houses in British Columbia and elsewhere; and
 - (e) directing the trading of the shares of H&R in the accounts of the nominees such that the shares were traded in a circular fashion at ever increasing prices.
7. As a result of the manipulation described above, the price of the shares of H&R rose from approximately \$2.00 US in August 1997 to a peak of \$6.75 US on September 5, 1997.
8. Harris knowingly assisted Mitton in manipulating the price of the shares of H&R by:
- (a) Distributing the shares Harris McLean received to a number of promoters who used the shares both to assist in the manipulation and as payment for their role in manipulating the price of the shares, including:
 - (i) transferring 1,744,000 shares to Alexander Troy Consultants Ltd., whose principal was David Heredia (Heredia); and
 - (ii) transferring 180,000 shares to OTC BB Ltd., whose principal was Jerome Rosen (Rosen).

Heredia and Rosen actively assisted Mitton in the manipulation of the price of the shares of H&R.

- (b) Allowing Harris McLean to act as a nominee for Mitton by operating brokerage accounts at three brokerage firms in British Columbia, one brokerage firm in the United States and by allowing Mitton to operate an account directly with Harris McLean (together, the Accounts). All trading in the shares of H&R in the Accounts was done on the instructions of, and for the benefit of, Mitton.

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9. As a result of heavy trading in the shares of H&R, the Commission, on October 1, 1997, issued directions to freeze property (the Freeze Order) in several brokerage accounts, including accounts in the name of Harris McLean and Ana Jimenez (Jimenez) at Georgia Pacific Securities Corporation (Georgia Pacific). Jimenez is the mother of Harris. On October 2, 1997, Harris McLean and Jimenez applied to vary the Freeze Order, which application was unsuccessful. On June 27, 2000, Harris settled with the Commission for misrepresentations he made to the Commission in the application of Harris McLean and Jimenez to vary the Freeze Order. As part of the settlement, Harris agreed that, for a period of ten years:
- (a) the exemptions described in sections 44 - 47, 74, 75, 98 or 99 of the Act would not apply to him;
 - (b) he would be prohibited from becoming or acting as a director or officer of any issuer; and
 - (c) he would be prohibited from engaging in investor relations activities.

Breaches of the Act and the Securities Rules

10. Harris breached section 57(a) of the Act and section 41.1 of the *Securities Act*, SBC 1985, c. 83 (the Former Act) by participating in transactions that he knew or ought to have known contributed to a misleading appearance of trading activity or artificial price for the shares of H&R.
11. Harris breached section section 34 of the Act and section 20 of the Former Act by acting as an unregistered dealer when distributing shares without being registered to do so.

Public Interest

12. Harris acted contrary to the public interest by breaching the Cease Trade Order by allowing Mitton to trade through Harris McLean and by acting as a nominee for Mitton.

Mitigating Factors

- ¶ 3 The Executive Director has taken into account the following facts as factors mitigating the sanctions which would otherwise have applied in the public interest:
13. Harris and Harris McLean have each suffered substantial losses as a result of Harris' involvement with Mitton and, as a consequence, Harris McLean was placed into voluntary liquidation by the courts of the Cayman Islands;

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14. Although Harris agrees that a large monetary sanction would be appropriate in this case, the Executive Director has taken into account as factors mitigating the monetary sanction that is in the public interest, the liquidation of Harris McLean, resulting in severe adverse financial consequences to Harris and his inability to pay a penalty.

Undertaking

¶ 4 Harris agrees and undertakes as follows:

1. to comply fully with the Act, the Rules, and any applicable regulations, policies and guidelines, from the date of this agreement; and
2. to not say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

Order

¶ 5 Harris consents to an order by the Executive Director (the Order) that:

1. under section 161(1)(c) of the Act, the exemptions described in sections 44-47, 74, 75, 98 or 99 of the Act do not apply to Harris;
2. under section 161(1)(d)(i) of the Act, Harris resigns any positions he holds as a director or officer of any issuer by February 1, 2004;
3. under section 161(1)(d)(ii) of the Act, Harris is prohibited from becoming or acting as a director or officer of any issuer; and
4. under section 161(1)(d)(iii) of the Act, Harris is prohibited from engaging in investor relations activities.

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Waiver

¶ 6 Harris waives any right he may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with or incidental to this settlement.

¶ 7 January 30, 2004

¶ 8 “Richard C. Harris”
Richard Harris

“J. Alberto”)
Witness Signature)
Jose Alberto)
Witness Name (please print))
Apto. #1386-1250)
Escazu, Costa Rica)
Address)
Retired)
Occupation

¶ 9 January 30, 2004

¶ 10 Brenda Leong
A/Executive Director